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July 16, 2003

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see www.revenue.state.il.us/Laws/regs/part1200/), is in response to your letter of January 15, 2003. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to AAA for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither AAA nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

Request for Private Letter Ruling

General Information

1. Enclosed please find an original Form IL-2848 Power of Attorney, authorizing Taxpayer's Representative to represent the Taxpayer, AAA in this matter.
2. This PLR is not requested with regard to hypothetical or alternative proposed transactions. The PLR requested regards the actual business practice of the Taxpayer. The Taxpayer began transacting business in the manner described below on or about October 1, 2002.
3. The Taxpayer is not currently under audit by the DOR.
4. The Taxpayer is not currently engaged in litigation with the DOR with regard to this or any other tax matter.
5. To the best knowledge of the Taxpayer and to the best of my knowledge, the DOR has not previously ruled regarding this matter for the Taxpayer. Neither Taxpayer nor Taxpayer's Representative, at any time prior, submitted the same or similar issue to the DOR.
6. The Taxpayer requests that certain information be deleted from the PLR prior to dissemination to others. The Taxpayer requests its name, address, name of its representative and references to states where inventory is maintained be deleted.

Tax Period at Issue

October 1, 2002 to present.

Statement of Material Facts

AAA is a direct marketer of computer hardware and software. AAA has its corporate headquarters in CITY/STATE. In addition, AAA maintains a customer returns inventory in a warehouse in CITY, Illinois.

AAA makes sales to customers throughout the United States, including customers located in Illinois. Orders are received by AAA by telephone, Internet, mail, facsimile, and e-mail. Purchase order acceptance for all orders is in CITY/STATE.

Once accepted, the orders are sourced via Electronic Data Interchange (EDI) to various affiliate and 3rd party suppliers. Some 3rd party suppliers have a warehouse in Illinois and product will be shipped directly from the supplier's Illinois warehouse via common carrier to customers in and out of Illinois. The EDI sourcing logic, which is performed automatically on order acceptance, is based on various factors including, but not limited to, price, availability, and distance to customer. There may be occasions where AAA could sell product from its returns inventory to an Illinois customer. AAA has no reporting mechanism in place that tracks an order's 'ship-from' location.

Currently AAA is collecting and remitting the Illinois State Retailers Occupation Tax and any local tax from its customers as determined by the customer's ship-to Illinois location.

Analysis

AAA has determined its obligation to collect local Illinois tax as follows:

- Sales to Illinois customers of products shipped from 3rd party suppliers Illinois warehouses in Illinois

As order acceptance occurs outside Illinois and the Illinois inventory is not maintained by AAA, AAA is not required to collect Illinois local tax.

- Sales to Illinois customers of product shipped from AAA's returns inventory warehouse in CITY, Illinois

Order acceptance occurs outside Illinois; however, as the Illinois inventory is maintained by AAA, AAA is required to collect CITY local tax.

- Sales to Illinois customers of product shipped from outside

As order acceptance and shipment occurs outside Illinois, AAA is not required to collect Illinois local tax.

As the 'ship-from' information is not available, AAA has opted to collect state and local taxes on all Illinois orders based on the 'ship-to' destination.

Questions

- Are Illinois customers required to self-assess a local use tax on product if not paid to a vendor?
- Is it allowable for AAA to voluntarily collect and remit local use tax on behalf of its customers?

Please provide us with the Department of Revenue's position on the above issues.

Thank you in advance for your assistance in this matter.

For your general information, please see the enclosed copy of Sec. 270.115 of the Home Rule Municipal Retailers' Occupation Tax for guidance concerning jurisdictional questions. In general, the imposition of the various sales tax related local taxes in Illinois are triggered when "selling" occurs in a jurisdiction imposing a tax. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred. See 86 Ill. Adm. Code 270.115.

The tax rate is fixed by the location of the seller, not the delivery location. The fact that the item being sold is shipped from out-of-State or from another Illinois location is immaterial for purposes of local taxes if the sale occurs through order acceptance in an Illinois jurisdiction imposing a local tax. For these transactions the local tax will be incurred. Although 86 Ill. Adm. Code 270.115 deals with the municipal Home-Rule taxes, the principles outlined in this regulation apply to all local taxes administered by the Department.

If a purchase order is accepted outside the State, but the property being sold is located in the retailer's inventory in an Illinois jurisdiction that has imposed a local tax (see, for example, Section 270.115(b)(3)), then the location of the property at the time of sale will determine where the seller is engaged in business for the purpose of determining the imposition of applicable local sales taxes.

The following information outlines the principles of nexus under present Illinois law. We hope it is helpful to you in determining whether you are responsible to pay tax in Illinois.

An "Illinois Retailer" is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills Illinois orders from that inventory. The Illinois Retailer is then liable for Retailers' Occupation Tax on gross receipts from sales and must collect the corresponding Use Tax incurred by the purchasers.

Another type of retailer is the retailer maintaining a place of business in Illinois. The definition of a "retailer maintaining a place of business in Illinois" is described in 86 Ill. Adm. Code 150.201(i), enclosed. This type of retailer is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801, enclosed. The retailer must collect and remit Use Tax to the State on behalf of the retailer's Illinois customers even though the retailer does not incur any Retailers' Occupation Tax liability.

The United States Supreme Court in Quill Corp. v. North Dakota, 112 S.Ct 1904 (1992), set forth the current guidelines for determining what nexus requirements must be met before a person is properly subject to a state's tax laws. The Supreme Court has set out a 2-prong test for nexus. The

first prong is whether the Due Process Cause is satisfied. Due process will be satisfied if the person or entity purposely avails itself or himself of the benefits of an economic market in a forum state. Quill at 1910.

The second prong of the Supreme Court's nexus test requires that, if due process requirements have been satisfied, the person or entity must have physical presence in the forum state to satisfy the Commerce Clause. A physical presence is not limited to an office or other physical building. Under Illinois law, it also includes the presence of any agent or representative of the seller. The representative need not be a sales representative. Physical presence in the State of Illinois, including the vendor's delivery and installation of his product on a repetitive basis, will trigger Use Tax collection responsibilities. Please refer to Brown's Furniture, Inc. v. Wagner, (1996), 171 Ill.2d 410.

The final type of retailer is the out-of-State retailer that does not have sufficient nexus with Illinois to be required to submit to Illinois tax laws. A retailer in this situation does not incur Retailers' Occupation Tax on sales into Illinois and is not required to collect Use Tax on behalf of its Illinois customers. However, the retailer's Illinois customers will still incur Use Tax on the purchase of the out-of-State goods and have a duty to self-assess their Use Tax liability and remit the amount directly to the State. The Use Tax rate is 6.25%.

Based upon the information in your letter, you are an "Illinois retailer". As such, you will owe Illinois tax at the State rate of 6.25% for all three transactions described in your letter. You are correct that you owe local tax only on sales of product shipped from your returns inventory warehouse in CITY, Illinois. You are not required to collect, nor is any local tax due, in the other situations. With the exception of CITY2, Illinois, jurisdictions have the authority to impose local use taxes only on titled and registered property. Therefore, local use tax is generally not due on the computer hardware and software sold to an Illinois customer. Please check with the CITY2 regarding the CITY2 Use Tax.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules, or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.